

LYNN CANAL CONSERVATION, INC.  
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July 30, 2008

Randy Bates, Director  
Division of Coastal and Ocean Management  
Box 111030  
Juneau AK 99811-1030

Dear Mr. Bates:

The changes made to the ACMP in 2003 gutted Alaska's coastal program, and were clearly not in the best interests of Alaska. The ACMP should be moved out of DNR and back to the Governor's Office. Habitat standards that were weakened, should again be strengthened. Local authorities should once again be able to determine local air, land and water quality standards. Coastal policy decisions should again be subject to non-agency appeal.

The following case is just one illustration of problems created by the 2003 changes. On April 28<sup>th</sup> an ACMP consistency determination was issued based on a factual error where the State "did not identify any subsistence areas at this site." However, two documents in the administrative record clearly showed that the area was indeed used for subsistence fishing. When Lynn Canal Conservation brought this factual error to the attention of the responsible official we were told that only an agency could contest a consistency determination. We then sent an email to every agency person involved in this decision (17 individuals) requesting such a challenge, but received no response, except for two "out of the office" automatic replies. This indicates that agency staff cannot be relied upon to watch-dog, or even respond, to a flawed process. As a result, a proper review of the subsistence standard required by 11 AAC 112.270 did not occur. That is, the state did not comply with its own administrative code, and when notified that this occurred, the agency took no corrective action. Something is obviously broken when state agencies violate state code and cannot be held accountable.

What this means for our highly utilized subsistence area was that since it wasn't identified, an erroneous conclusion was drawn that "this project as proposed, described, and amended meets the intent of this standard". However, 11 AAC 112.270(a) requires that impacts to subsistence uses of coastal resources be avoided or minimized. Since none were identified, avoidance or minimization was neither considered nor assessed. The same code (at (b)) requires an evaluation of "reasonably foreseeable adverse impacts". Again, there was no such evaluation.

As a result, a vital community subsistence area has been put at risk. The project's sponsor admitted that the degree of competition with and risk to wild stocks from the Lutak net pen project are **unknown** and **unpredictable**. Potential risks include predation and out-competing wild salmon (sockeye, coho, and pink) and eulachon, all heavily

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harvested for subsistence purposes in Lutak Inlet and the Chilkoot River, respectively. The potential impacts to a naturally productive sustainable ecosystem could be disastrous, and were simply never evaluated. Ways to avoid or minimize those impacts as required by the Alaska Administrative Code were never assessed. An appeal of the process to the DNR commissioner was denied because "although MLW's [DNR's Mining, Land and Water division] decision included a statement that the project was found consistent with the ACMP, under DNR's appeal regulations, a person may not appeal or request reconsideration of an ACMP final consistency determination (11 AAC 02.015(b)). Accordingly, I cannot address your concern about the ACMP determination." (June 12, 2008 letter from Commissioner Irwin to Lynn Canal Conservation).

The above example shows the utter failure of the current ACMP process to address impacts to vital community subsistence resources. It shows a lack of necessary checks and balances. It shows a flawed process with no public recourse. It shows that an agency violated Alaska Administrative Code, and when told, no one inside the bureaucracy was willing to act. This is not acceptable because our coastal resources are culturally and economically vital to communities all across Alaska.

A procedure where state agencies can violate state statutes with no administrative recourse is deeply flawed and needs remedy. Documentation is available upon request.

Thank you in advance for fixing this serious defect.

  
Nancy Berland  
Conservation Director

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